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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,092	01/17/2002	Bruce DeFoor	X-13281	6662

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

68

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/050,092	Defoor	
	Examiner	Art Unit	
	Shian T Luong	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 July 2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) Notice of References Cited (PTO-892)                            18) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    20) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. Claims 2 and 12-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "said pocket has a width and depth generally equal to the diameter of a chalk stick to be received therein" does not indicate the size of the pocket because the chalk stick is not being claimed in combination with the carrier. Applicant argues that the phrase is clear because the carrier correspond dimensionally to the diameter of a given chalk stick to be received therein. But applicant has not claim a chalk stick and hence the examiner cannot determine a pocket with a size that is equal to an imaginary chalk stick. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode in view of Hadden (US 6,253,922). Rode discloses a carrier for elongated object comprising a body of flexible material with sides and ends. The carrier is rollable in the direction between the ends to form a roll enclosing the pockets with the outer surface of the body. Rode discloses a plurality of rows for receiving the elongated articles but does not show

more than one pocket on each row with end walls or side walls. However, Hadden suggest providing a plurality of pockets on a carrier wherein each row has at least three pockets. It would have been obvious in view of Hadden at the time of the invention to provide more than one pocket on each row to store additional elongated objects.

Applicant argues that Hadden is not made out of a body of flexible material and it is neither intended to nor capable of receiving chalk sticks, and is neither intended to be nor is it capable of being rolled. However, if Hadden possess the entire characteristics applicant claimed, then Hadden would be an anticipated reference. For the purpose of this Office Action, Hadden is only cited to show that instead of one pocket per row of space, one can easily add additional pockets for one single row. The examiner has only modified Rode to provide additional spaces so additional contents can be supported. This is an obvious feature commonly done by an artisan in the art.

4. Claims 5-6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode in view of Hadden and Kroop et al (US 5,388,689). Rode discloses a plurality of rows for receiving the elongated articles but does not show more than one pocket on each row with end walls or side walls. However, Hadden suggest providing a plurality of pockets on a carrier wherein each row has at least three pockets. Rode also does not disclose the use of separate polymeric and fabric material on the bottom side of the resilient polymeric material. Kroop et al. is cited to show that a container with a plurality of pockets in a midportion of the container with a vinyl layer on the bottom of the pockets and a nylon fabric on the outer surface of the vinyl layer to provide protection and some rigidity to the container. It would have been obvious to

provide the combination of the flexible vinyl and nylon layers on the bottom surface of the pocket to provide extra protection for the elongated objects.

Applicant's assertion with the combination is not persuasive. Kroop et al. is suggesting the use of a fabric cover on an exterior surface of a carrier to not only provide support for the carrier, but also to protect the contents. One of ordinary skill in the art readily recognizes that the bottom of Rode's carrier needs not to be removed to place an exterior cover for the device. The manufacturer can easily add the layer thereon without the removal step to provide more support for the contents.

5. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Allen (US 5,320,223) and Gutentag (US 5,524,765). Rode does not show the pocket extending through the strip with flexible sheet cover the bottom side of the strip. But Allen teaches as an example of a device with a plurality of pockets wherein the pockets extend through the strip 22. A flexible film 26 and another flexible layer 20 on a bottom portion of the flexible layer cover the strip. Guetentag is also cited to show the lamination of a top, middle and bottom layer. The top layer has a plurality of pockets wherein the pockets extend through the top layer. It would have been obvious to extend through the strip to form the pockets so as to provide a larger pocket compartment.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 7, further in view of Kroop et al (US 5,388,689). Rode as modified above does not disclose the use of separate polymeric and fabric material on the bottom side of the resilient polymeric material. Kroop et al. is cited to show that a container with a plurality of pockets in a midportion of the container with a vinyl layer on the bottom of the pockets and a nylon fabric on the outer surface of the vinyl layer to provide protection and some rigidity to the container. It would have been obvious to provide the combination of the flexible vinyl and nylon layers on the bottom surface of the pocket to provide extra protection for the elongated objects.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Stricklin et al. (Des. 323,065) and Hunt (US 5,427,239). Rode fails to show a carrier with a fabric layer that extends beyond the end edges of the flexible top layer and also lacks a fastening means. However, Stricklin et al. teaches a use of a pocket portion that has end edges shorter than the fabric layer. The carrier has a Velcro strap on the fabric layer to secure the case in a rolled position. Similarly, Hunt teaches a carrier with a Velcro strap or ties 130 to secure a carrier in the rolled position. Hence, one of ordinary skill in the art would readily recognize the use of strap or strips on the outer portion to secure the carrier when it is in a storage position.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 13, further in view of Stricklin et al. (Des. 323,065) and

Hunt (US 5,427,239). Rode fails to show a carrier with a fabric layer that extends beyond the end edges of the flexible top layer and also lacks a fastening means. However, Stricklin et al. teaches a use of a pocket portion that has end edges shorter than the fabric layer. The carrier has a Velcro strap on the fabric layer to secure the case in a rolled position. Similarly, Hunt teaches a carrier with a Velcro strap or ties 130 to secure a carrier in the rolled position. Hence, one of ordinary skill in the art would readily recognize the use of strap or strips on the outer portion to secure the carrier when it is in a storage position.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 15, further in view of Hadden (US 6,253,922). Rode discloses a plurality of rows for receiving the elongated articles but does not show more than one pocket on each row. However, Hadden suggest providing a plurality of pockets on a carrier wherein each row has at least three pockets. It would have been obvious in view of Hadden at the time of the invention to provide more than one pocket on each row to store additional elongated objects.

10. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 16, further in view of Stricklin et al. (Des. 323,065) and Hunt (US 5,427,239). Rode fails to show a carrier with a fabric layer that extends beyond the end edges of the flexible top layer and also lacks a fastening means. However, Stricklin et al. teaches a use of a pocket portion that has end edges shorter than the fabric layer. The carrier has a Velcro strap on the fabric layer to secure the case in a rolled position. Similarly, Hunt teaches a carrier with a Velcro strap or ties 130 to secure a carrier in the rolled

position. Hence, one of ordinary skill in the art would readily recognize the use of strap or strips on the outer portion to secure the carrier when it is in a storage position.

11. Claims 20,25,29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode in view of Kroop et al (US 5,388,689) and Allen (US 5,320,223) and Gutentag (US 5,524,765). Rode does not show the pocket extending through the strip with flexible sheet cover the bottom side of the strip and the use of separate polymeric and fabric material on the bottom side of the resilient polymeric material.. But Allen teaches as an example of a device with a plurality of pockets wherein the pockets extend through the strip 22. A flexible film 26 and another flexible layer 20 on a bottom portion of the flexible layer cover the strip. Guetentag is also cited to show the lamination of a top, middle and bottom layer. The top layer has a plurality of pockets wherein the pockets extend through the top layer. Kroop et al. is cited to show that a container with a plurality of pockets in a midportion of the container has a vinyl layer on the bottom of the pockets and a nylon fabric on the outer surface of the vinyl layer to provide protection and some rigidity to the container. It would have been obvious to extend through the strip to form the pockets so as to provide a larger pocket compartment and it would have been obvious to provide the combination of the flexible vinyl and nylon layers on the bottom surface of the pocket to provide extra protection for the elongated objects.

12. Claim 21, 26, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 20, 25, 29, respectively, further in view of Hadden (US 6,253,922). Rode discloses a plurality of rows for receiving the elongated articles but does not show more than one pocket on each row. However, Hadden suggest providing a plurality of pockets on a carrier wherein each row has at least three pockets. It would have been

obvious in view of Hadden at the time of the invention to provide more than one pocket on each row to store additional elongated objects.

13. Claims 22-24, 27-28, 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 21, 26, 30, respectively, further in view of Stricklin et al. (Des. 323,065) and Hunt (US 5,427,239). Rode fails to show a carrier with a fabric layer that extends beyond the end edges of the flexible top layer and also lacks a fastening means. However, Stricklin et al. teaches a use of a pocket portion that has end edges shorter than the fabric layer. The carrier has a Velcro strap on the fabric layer to secure the case in a rolled position. Similarly, Hunt teaches a carrier with a Velcro strap or ties 130 to secure a carrier in the rolled position. Hence, one of ordinary skill in the art would readily recognize the use of strap or strips on the outer portion to secure the carrier when it is in a storage position. With respect to claim 28, it would have been obvious to remove the fabric layer and place the strap on the vinyl layer to save material cost since it would not alter the function of the carrier.

### *Drawings*

14. The PTO has not received the formal drawings.

### *Conclusion*

15. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information

Art Unit: 3728

without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.**

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302 and for After Final Amendment the number is (703) 872-9303. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on T-F from 7:00am to 4:00pm EST.

STL  
August 29, 2003

  
Primary Examiner  
Shian Luong  
Art Unit 3728